Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2014

Public Authority: Chief Constable of Greater Manchester Police
Address: Openshaw Complex
Lawton Street
Manchester
M11 2NS

Decision (including any steps ordered)

1. The complainant requested information relating to the discovery of a body in November 2011. GMP disclosed some information, but refused to confirm or deny whether it held the remainder under the exemptions provided by sections 30(1) (information held for the purposes of an investigation), 38(2) (endangerment to health or safety) and 40(5) (personal information) of the FOIA.

2. The Commissioner's decision is that GMP cited sections 38(2) and 40(5) correctly. In relation to section 30(3), however, his conclusion is that the public interest did not favour the maintenance of that exemption and GMP is now required to disclose the confirmation or denial withheld under that exemption.

3. The Commissioner requires GMP to take the following steps to ensure compliance with the legislation.

    - Confirm or deny whether it holds information within the scope of request (1). In relation to any information that is held, this should either be disclosed or the complainant provided with a valid reason as to why this information will not be disclosed.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 18 September 2013, the complainant wrote to GMP and requested information in the following terms:

"I would like to request the following information relating to the death of Chamman Nisa whose body was discovered on the bank of Hollingworth Lake on November 26, 2011. In each case could you confirm that you hold the information and answer each of the following questions.

(1) Was the water found in Chamman's lungs tested to see if it matched the water in Hollingworth Lake?

(2) Was Chamman's father informed that she was pregnant at the time of her death?

(3) Was Chamman's brother informed that she was pregnant at the time of her death?

(4) Were any tests carried out to confirm the identity of the baby's father?

(5) How many times had Chamman contacted the police in fear of her safety prior to her death?

(6a) Had Chamman ever been reported missing from home?

(6b) If Chamman had previously been reported as missing from home, how many times had she been reported missing from home?

(6c) What was the date of each missing report?

(7) Where was her father in the four hours leading up to the discovery of her body?

(8) Where was her brother in the four hours leading up to the discovery of her body?

(9) Where was her boyfriend in the four hours leading up to the discovery of her body?

(10) Was Chamman's boyfriend ever arrested on suspicion of criminal activity relating to her death?

(11) Was Chamman's father ever arrested on suspicion of criminal activity relating to her death?

(12) Was Chamman's brother ever arrested on suspicion of criminal activity relating to her death?"

6. After a delay, GMP responded on 16 December 2013. GMP provided answers in response to requests (5) and (6)(a) to (c), but refused to confirm or deny whether it held information falling within the scope of the remainder of the requests under the following exemptions:

   30(3) (information held for the purpose of an investigation)

   38(2) (endangerment to health and safety)

   40(5) (personal information)

7. The complainant responded on 31 January 2014 and requested an internal review. GMP responded with the outcome of the internal review on 26 February 2014. The conclusion of this was that the refusal was upheld on the grounds given previously.

Scope of the case

8. The complainant contacted the Commissioner initially on 25 November 2013 to complain at that stage about the failure of GMP to respond to her information request. The ICO intervened at that time and ensured that GMP provided a response to the request.

9. Following receipt of the response to her information request, the complainant contacted the Commissioner again on 23 December 2013 to complain about the refusal of her information requests. At this point the complainant was advised to revert to GMP and ask it to carry out an internal review.

10. After the completion of the internal review, the complainant contacted the ICO again to complain about the refusal of her requests. the complainant subsequently clarified that she wished the scope of this case to cover the refusal of requests 1 to 4 and 7 to 12, as well as the delay in responding to her requests, the quality of the responses she received from GMP and what the complainant believed to be a breach by GMP of the section 16 duty to provide advice and assistance.

11. During correspondence with the ICO, GMP clarified in relation to which requests each exemption had been applied. Although it had not been clear about this to the complainant, it now stated that section 30(3) was cited in relation to request (1), section 40(5) for requests (2), (3) and (7) to (12), and section 38(2) for request (4). As requests (5) and (6) were complied with, these are not included within the scope of this case.

Reasons for decision

Sections 10 and 17

12. Section 10 of the FOIA requires that a public authority must respond to an information request within 20 working days of receipt. Section 17 provides the same in relation to a response that sets out why a request is refused.

13. In this case the request was made on 18 September 2013, but GMP did not respond to it until 16 December 2013. In failing to respond to the request within 20 working days of receipt, GMP breached the requirements of sections 10 and 17.

14. Section 17 also requires that when refusing a request a public authority should explain why the request is refused. In this case, the view of the Commissioner is that GMP failed to comply with this requirement, in particular by failing to clearly indicate to the complainant where each exemption was cited.

Section 30(3)

15. GMP cited section 30(3) in relation to request (1). This section provides an exemption from the duty to confirm or deny whether information is held in relation to any information that, if it were held, would fall within any of the classes described in sections 30(1) and 30(2). Consideration of section 30(3) involves two stages; first, the exemption must be engaged as any information within the scope of the request would be in the relevant class. Secondly, this exemption is qualified by the public interest. This means that if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.

16. GMP did not provide any clear explanation as to why this exemption was believed to be engaged to either the complainant or the ICO. In correspondence with the ICO GMP suggested that, if it did hold information within the scope of request (1), this would be exempt by virtue of section 30(2)(a)(i). That subsection, however, specifies information relating to obtaining information from confidential sources. GMP provided no description as to how any information falling within the scope of request (1) would relate to confidential sources. The Commissioner's view is that it is more appropriate to consider whether any information held falling within the scope of request (1) would be within any of the classes described in section 30(1).

17. Section 30(1)(a)(i) provides an exemption for information held for the purposes of an investigation with a view to ascertaining whether a

person should be charged with an offence. Information held for the purposes of a police investigation will generally be within this class. The Commissioner accepts that any information that was held by GMP that fell within the scope of request (1) would have been held for the purposes of an investigation and so would be within the class described in section 30(1)(a)(i). The exemption provided by section 30(3) of the FOIA was, therefore, engaged.

18. The next step is to consider the balance of the public interest. The question here is whether there is a public interest in disclosure of the confirmation or denial that outweighs the public interest in the preservation of a safe space in which GMP is not obliged to confirm or deny whether it holds the requested information.

19. Covering first factors that favour maintenance of the exemption, confirmation or denial in response to request (1) would effectively confirm whether GMP had carried out an investigation into the circumstances referred to in the request. The Commissioner recognises that there are situations in which it will be important for the purposes of an investigation for a police force not to be obliged to confirm whether it has carried out an investigation. This could be where, for example, an investigation is ongoing and particularly where it is vital not to reveal to an individual that they are under investigation.

20. In this case, however, the Commissioner does not believe that these considerations apply. The date of the request is close to two years after the circumstances it refers to and followed the issuing of a verdict by the coroner. Also of note is that GMP advanced no argument about harm to any ongoing investigation. On the basis of the passage of time, that the coroner had already issued a verdict by the date of the request and that GMP advanced no argument on this point, the Commissioner concludes that there is no public interest in favour of maintenance of the exemption in relation to protecting any ongoing investigation.

21. The one argument in favour of maintenance of the exemption that GMP advanced concerned harm to future investigations through the disclosure of information relating to techniques that may have been used in any investigation that it did carry out. Whilst it asserted that a *"subject matter expert"* had been consulted on this point, it provided no reasoning in support of this argument. In the absence of any reasoning, the Commissioner is not clear as to *how* confirmation or denial in response to request (1) could harm future investigations in the way that GMP suggests and so does not consider that this argument carries any weight as a public interest factor.

22. Turning to arguments in favour of disclosure, whilst the Commissioner is of the view that there is little specific public interest in information

relating to the circumstances referred to by the complainant, there is public interest in favour of disclosure of the confirmation or denial to promote the openness of GMP. This is a valid public interest factor in favour of provision of the confirmation or denial.

23. In the absence of valid factors in favour of maintenance of the exemption, the conclusion of the Commissioner is that the factor relating to the openness of GMP tips the balance in favour of disclosure. His finding is, therefore, that the public interest in the maintenance of the exemption is outweighed by the public interest in confirmation or denial. At paragraph 3 above GMP is required to confirm or deny whether it holds information within the scope of request (1).

Section 38(2)

24. This section was cited in relation to request (4). Section 38(2) provides an exemption from the duty to confirm or deny where to provide the confirmation or denial would, or would be likely to, endanger health or safety. This exemption is also qualified by the public interest, which means that analysis of whether the exemption is engaged must be followed by analysis of the balance of the public interests.

25. The reasoning from GMP as to why this exemption was engaged concerned not wishing to comment on the allegation made in the wording of the request; namely that the individual referred to in the request was pregnant at the time of her death. GMP believed that disclosure of the confirmation or denial would be upsetting to relatives of that individual to the point that this would be likely to endanger their mental health.

26. In recognition of the very sensitive subject matter that this request refers to, the Commissioner is prepared to accept this reasoning from GMP. His conclusion is, therefore, that the exemption from the duty to confirm or deny provided by section 38(2) is engaged.

27. The next step is to consider the balance of the public interest. In relation to this exemption the question is whether the public interest in disclosure of the confirmation or denial outweighs that in avoiding the endangerment to health that the Commissioner has, by concluding that the exemption is engaged, accepted was likely to occur.

28. The Commissioner noted above in relation to section 30(3) that he does not regard there as being strong public interest in confirmation or denial relating to the circumstances referred to in the request. Whilst in relation to that exemption the general public interest in promoting the openness of GMP was sufficient for the Commissioner to find in favour of disclosing the confirmation or denial, in relation to this exemption the

public interest in maintenance of the exemption is much stronger. Clearly in any such situation where disclosure would be likely to lead to endangerment to health, there is a public interest in avoiding that outcome.

29. For these reasons, the conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. GMP was not, therefore, obliged to confirm or deny whether it held information within the scope of request (4).

Section 40(5)

30. This section provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. The first step when considering this exemption is to address whether providing the confirmation or denial would involve the disclosure of personal data.

31. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

> *"'Personal data' means data which relate to a living individual who can be identified-*
>
> *(a) from those data,*
>
> *(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."*

32. This exemption was relied on by GMP in relation to requests (2), (3) and (7) to (12). From the wording of those requests, the Commissioner considers it clear that a confirmation or denial of whether that information is held would relate to the individuals who are referred to in the requests. Although those individuals are not directly identified through the requests, the Commissioner considers that it is also clear that there will be a number of individuals capable of identifying those individuals through the information that is given in the wording of the requests. Confirmation or denial in response to these requests would, therefore, involve the disclosure of personal data.

33. The next step is to consider whether that disclosure of personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data must be processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair to the data subjects.

34. The Commissioner has considered requests (2) and (3) separately as these requests would involve the disclosure of personal data that is not considered *sensitive* for the purposes of the DPA. In forming a view in relation to requests (2) and (3) on whether disclosure would be fair the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there would be any legitimate public interest in disclosure of the confirmation or denial.

35. Covering first what the reasonable expectation of the data subjects would be, any information that GMP did hold falling within the scope of requests (2) and (3) would no doubt be considered private and highly emotive by those individuals. As such, the Commissioner considers it likely that those individuals would hold a strong expectation that the confirmation or denial would not be disclosed by GMP.

36. On the issue of the consequences of disclosure upon the data subjects, the view of the Commissioner is that disclosure in contravention of the reasonable expectation referred to above would be very likely to result in distress to the data subjects.

37. As to whether there would be a legitimate public interest in the disclosure of this information, whilst section 40(5) is an absolute exemption and not qualified by the public interest, it is necessary for there to be a legitimate public interest in order for disclosure to be compliant with the DPA. A sufficiently strong interest may outweigh the factors against disclosure described above.

38. In relation to the other exemptions covered above, the Commissioner has found that there is little public interest in confirming or denying whether the requested information was held, beyond the general public interest in the openness of GMP. The Commissioner is of the same view here; that there is little public interest specifically in disclosure of the confirmation or denial of whether GMP hold information falling within the scope of requests (2) and (3).

39. The Commissioner's view is that the data subjects would hold a reasonable expectation that GMP would not state whether it held the information requested, that disclosure of that confirmation or denial would result in distress to the data subjects, and that there is little legitimate public interest in the disclosure of this information. As a result he finds that confirmation or denial would be unfair and in breach of the first data protection principle. Therefore, section 40(5) was engaged in relation to requests (2) and (3) and so GMP was not obliged to confirm or deny whether it held that information.

40. Turning to requests (7) to (12), section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject. The Commissioner considers it clear that any information held by GMP falling within the scope of requests (7) to (12) would be the sensitive personal data of those individuals according to that definition.

41. That this information would be the sensitive personal data of those individuals is relevant here when considering their expectations and the consequences of disclosure upon them. The view of the Commissioner is that it is highly likely to be the case that the data subjects would hold a strong expectation that GMP would refuse to confirm or deny whether it held this information and that disclosure contrary to this expectation would result in distress to those individuals.

42. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial in response to requests (7) to (12).

43. In conclusion, the Commissioner finds that the information requested constitutes the sensitive personal data of individuals other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) of the FOIA is, therefore, engaged and GMP was not obliged to confirm or deny whether it held that information.

Other matters

44. The Commissioner has commented previously in this decision notice on the lack of quality in the responses sent by GMP to both the complainant and to his office. It is important that GMP takes note of this criticism and improves the standard of its responses to requesters and to the ICO.

45. The complainant raised an issue concerning the duty of a public authority to provide advice and assistance to a person making an information request. Her view was that GMP should have contacted her immediately to offer her the chance to amend her requests once it became clear that much of the information she had requested was personal data.

46. Whilst GMP should have responded to the requests within 20 working days, it was not under an obligation to provide the complainant with an

opportunity to amend her request. He agrees, however, that it should not have taken GMP so long to respond to the requests and it must ensure that there is no repetition of this delay in relation to future requests.

47. A record has been made of the issues that have arisen in this case. These issues may be revisited should evidence from other GMP cases suggest that this is necessary.

Right of appeal

48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals,
    PO Box 9300,
    LEICESTER,
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0116 249 4253
    Email: GRC@hmcts.gsi.gov.uk
    Website: http://www.justice.gov.uk/tribunals/general-regulatory-chamber

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

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